

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

BRICE HUTTINGER,

Defendant/Movant.

Cause No. CR 08-39-GF-BMM
CV 15-77-GF-BMM

ORDER DISMISSING § 2255
MOTION AND DENYING
CERTIFICATE OF APPEALABILITY

On September 15, 2015, Defendant Brice Huttinger moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Huttinger is a federal prisoner proceeding pro se.

Huttinger filed a first motion under 28 U.S.C. § 2255 on February 22, 2010 (Docs. 52, 55, 56). The motion and a certificate of appealability were denied on May 25, 2010 (Doc. 57). The Court of Appeals denied a certificate of appealability on December 20, 2010 (Doc. 60).

On March 25, 2011, Huttinger filed a motion seeking an amended sentence (Doc. 61). On March 28, 2011, the motion was recharacterized and dismissed as an unauthorized second § 2255 motion. A certificate of appealability was also denied (Doc. 62).

On October 20, 2011, Huttinger filed yet another § 2255 motion, as well as a motion for the appointment of counsel (Docs. 63, 64). The § 2255 motion was

dismissed, the motion for counsel was denied as moot, and a certificate of appealability was denied on October 24, 2011 (Doc. 65).

Huttinger has now filed a fourth post-judgment motion challenging the validity of his conviction or sentence. The Court of Appeals has not authorized Huttinger to file a successive § 2255 motion in this Court. *See* 28 U.S.C. §§ 2255(h), 2244(c). Huttinger must obtain leave from the Court of Appeals to file a successive § 2255 motion in this Court. Unless and until he does so, this Court must dismiss any unauthorized successive § 2255 motion for lack of jurisdiction. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

A certificate of appealability is denied. Although reasonable jurists might dispute whether *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), applies to Huttinger's sentence, there is no doubt that this Court lacks jurisdiction to entertain a second or successive § 2255 motion without authorization to do so from the Court of Appeals. The case is clearly controlled by *Burton*. *Gonzalez v. Thaler*, __ U.S. __, 132 S. Ct. 641, 648 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Huttinger's § 2255 motion (Doc. 66) is DISMISSED for lack of jurisdiction.

2. A certificate of appealability is DENIED. The Clerk of Court shall

immediately process the appeal if Huttinger files a Notice of Appeal;

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 15-77-GF-BMM are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 16th day of September, 2015.



Brian Morris
United States District Court Judge